

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN H. RODRIGUES and DEPARTMENT OF THE NAVY,
AIR SYSTEMS COMMAND, San Diego, CA

*Docket No. 98-293; Submitted on the Record;
Issued October 28, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation on the basis that he no longer had any residual disability causally related to his September 25, 1989, December 5, 1988 and July 5, 1985 employment injuries.

On July 5, 1985 appellant, then a 30-year-old air craft worker, filed a claim alleging that he injured his neck while removing a F14 engine on an aircraft.¹ The Office accepted the claim for cervical strain. Appellant returned to limited-duty work on July 9, 1985 and full-duty work on February 16, 1986.

On December 6, 1988 appellant filed a claim alleging that he injured his lower neck, spine and back of his neck on December 5, 1988 while bending over working in a confined space on an aircraft.² Appellant stopped work on December 6, 1988 and returned to work on February 22, 1989. The Office accepted the claim for cervical strain, sprain and subluxation.

On September 25, 1989 appellant filed a claim alleging that he injured his neck and left arm on that date while in the performance of his employment.³ Appellant stopped work on September 26, 1989 and returned to light-duty work on December 4, 1989. The Office accepted the claim for a cervical strain and aggravation of cervical herniated disc. Appellant was permanently reassigned to a sedentary modified clerical position.

On September 9, 1996 the Office issued a notice of proposed termination of further medical benefits.

¹ This was assigned claim number A13-771521.

² This was assigned claim number A13-878502.

³ This was assigned claim number A13-902742.

On October 9, 1996 the Office finalized the termination of appellant's medical benefits on the basis that he did not have any residual disability from his accepted employment injury.

By decision dated December 23, 1996, the hearing representative reversed the Office's October 9, 1996 decision and remanded for further development. In his decision, the hearing representative instructed the Office to combine appellant's September 25, 1989 claim with his December 5, 1988 claim. He also instructed the Office to send a revised statement of accepted facts to Dr. Eric C. Yu, a Board-certified orthopedic surgeon and Office referral physician, for a reevaluation of the case and a determination of whether appellant suffered from residuals from either his December 5, 1988 or September 25, 1989 employment injury.

By letter dated April 14, 1997, the Office informed Dr. Yu that he had been sent an inaccurate statement of facts as it omitted a prior December 5, 1988 employment injury. The Office included medical records from both injuries and an amended statement of facts to include the December 5, 1988 injury for his opinion as to whether appellant had residual disability from any of his accepted employment injuries.

In an April 18, 1997 report, Dr. Yu, based upon the revised statement of accepted facts and a review of the medical record, diagnosed cervical spine strain, herniated intervertebral disc at C5-6, and probable old C5 spinous process fracture.

By letter dated June 3, 1997, the Office informed Dr. Yu that he had been sent an inaccurate statement of facts as it omitted a prior July 5, 1985 employment injury. The Office included medical records from both injuries and an amended statement of facts to include the July 5, 1985 injury for his opinion as to whether appellant had residual disability from any of the three employment injuries.

In a report dated July 7, 1997, Dr. Yu, based upon a review of the medical record and revised statement of accepted facts, diagnosed resolved cervical spine strain, herniated intervertebral disc at C5-6 and a probable old spinous fracture. Dr. Yu indicated that appellant's cervical spine strain was due to his three employment injuries and that his September 25, 1989 injury had aggravated his C5-6 disc herniation which had been documented on March 12, 1989. He further noted that there was no evidence that appellant sustained a herniated disc due to appellant's July 5, 1985 employment injury. Dr. Yu opined that appellant's C5 spinous process fracture was not related to any of appellant's accepted employment injuries based upon a review of the medical records. Regarding residual disability, Dr. Yu opined that appellant had "residual subjective intermittent neck pain which is ... probably related to his underlying disc degeneration/herniation" and that he was "unable to correlate within medical probability his disc degeneration/herniation condition to his injury of 1985 by medical records review." Dr. Yu then noted some physical restrictions due to appellant's March 12, 1989 magnetic resonance imaging scan finding of a disc herniation. Regarding further medical treatment, Dr. Yu opined that there was "no clinical indication for further diagnostic work-up and medical care."

By decision dated July 30, 1997, the Office found that the medical evidence established that appellant did not have any residual disability from any of his accepted employment injuries and terminated his compensation and medical benefits effective July 7, 1997.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits on the basis that he no longer had any residual disability or condition causally related to his September 25, 1989, December 5, 1988 and July 5, 1985 employment injuries.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

In the present case, the Office accepted appellant's employment injury for cervical strain and sprain and aggravation of cervical herniated disc. The Office thus has the burden of proof to justify termination of compensation for that condition. The Office terminated appellant's compensation benefits based on Dr. Yu's July 7, 1997 medical report. In this report, Dr. Yu opined that appellant ceased to have any residuals of his July 5, 1985, December 5, 1988 and September 25, 1989 employment injuries. He indicated that appellant did not suffer from any residual disability due to his accepted employment injuries. Dr. Yu noted that appellant did suffer from symptoms related to appellant's underlying disc degeneration/herniation which was not related to any of appellant's three accepted employment injuries.

The Board finds that Dr. Yu's July 7, 1997 report is well rationalized and based on a complete and accurate factual and medical history. The Board finds that the Office properly relied on this report when it terminated appellant's compensation benefits in its July 30, 1997 decision.

⁴ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁵ *Id.*

⁶ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

The decision of the Office of Workers' Compensation Programs dated July 30, 1997 is affirmed.

Dated, Washington, D.C.
October 28, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member